IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1010 OF 2004

PETITIONER

Johan Ram, S/o Man Singh,
P. No.211232, Civil Maintenance
Department , Township, Rajhara,
P.S.Rajhara, Distt. Durg. (C.G.)

VERSUS

RESPONDENTS

1. Steel Authority of India Limited , Bhilai Steel Plant; through Managing Director, Bhilai Steel Plant, Bhilai, Distt. Durg. (Chhattisgarh)

2. Town Administrator I.O.C. Rajhara, Distt. Durg. (CG)

P. R. No. 9/1/04
Presented by Shri Sameer Sahu
dated 24.03.04

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

1 Particulars of the petitioner: -As given above

(74)

ATR

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Writ Petition No.1010/2004

Johanram

Vs.

Steel Authority of India and another

ORDER

Post for 25.01.2005

Sd/-
Sunil Kumar Sinha
Judge

(75)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Writ Petition No.1010/2004

Johanram

Vs.

Steel Authority of India and another

Shri Ashok Vaishnav, counsel for the petitioner.

Shri P.Diwakar, Senior Advocate with Ku.Pritha Ghoshal, for the respondents.

ORDER
(25.01.2005)

Sunil Kumar Sinha, J,

By this writ petition filed under Article 226/227 of the Constitution of India, the petitioner has substantially challenged the validity of the impugned order dated 28.2.2004 (Annexure P-9) passed in Misc.Civil Appeal No.5/2003 by the Additional District Judge, Balod, District Durg (C.G).

(2) The facts of the case are that the petitioner filed a civil suit in the Court of Civil Judge, Class-II, Balod for the relief of declaration that the actual date of birth of the petitioner is 09.11.1948. He further claims that according to the said date of birth, he is entitled to work to the age of 60 years (the age of superannuation) and thereafter he should be retired on 30.11.2008. A relief of permanent injunction was also sought for by the petitioner praying that the defendants should be

restrained from superannuating the petitioner on 31.3.2003. A copy of the plaint is filed as Annexure P-3. The case of the petitioner is that he was appointed as a labour on 27.3.1973 and thereafter he was appointed as a regular employee in the Civil Maintenance Department of Town Administration, Rajahra on 17.1.1979. Initially, by mistake, his date of birth was recorded as 26.3.1938. At the time of his regular appointment on 17.1.1979, his date of birth was again recorded as 18.1.1952 which was also incorrect. In fact, his date of birth is 09.11.1948 and according to the age of superannuation that is 60 years, he would retire on 30.11.2008. When the notice for retirement on 31.3.2003 was received, the cause of action arose and the petitioner filed the instant suit. The petitioner also filed application for temporary injunction under order 39 Rule 1 & 2 of the Code of Civil Procedure praying that the defendants should be restrained from effecting the retirement of the plaintiff/ petitioner on 31.3.2003 and the effect and operation of the order dated 28.2.2003 should also be stayed.

(3) The learned trial Court after hearing the parties, allowed the application for temporary injunction vide order dated 29.3.2003. It was directed that the petitioner shall not be retired in pursuance of the order dated 28.2.2003. Against the aforesaid order passed by the trial Court, the defendants (respondents herein) filed a Misc.Appeal before the Court of Additional District Judge, Balod vide M.A.No.5/2003. The said

Misc. Appeal was finally decided by the impugned order dated 28.2.2004 and the same was allowed and the order of temporary injunction granted on 29.3.2003 by the trial court was set aside. The main contention raised by the counsel for the respondents before the Miscellaneous Appellate Court was that in fact, the actual dispute raised by the plaintiff was a dispute in relation to superannuation from the service and the same comes within the meaning of an "industrial dispute", therefore, the jurisdiction of the civil court was barred. Since the Civil Court's jurisdiction was barred, therefore, the suit itself was not maintainable and no orders of temporary injunction would have been passed by the trial Court.

(4) Appreciating this contention, the appellate court held that the dispute in hand is in fact, an industrial dispute and for this, the civil courts are having no jurisdiction to entertain a suit, therefore, the petitioner has no prima facie case in his favour. It is against the said order of the appellate Court, the plaintiff/petitioner has filed this petition, which is ultimately a petition under Article 227 of the Constitution of India.

(5) Learned counsel for the petitioner submits that the appellate Court committed an error of law by holding that a dispute regarding correction of date of birth was an industrial dispute, therefore, a civil suit was not maintainable. In fact, the appellate Court gave a finding in the preliminary stage of grant of injunction in relation to maintainability of the suit even without framing any issue on the same and without

affording any opportunity of being heard to the parties concerned. He prayed for setting aside the order of appellate Court.

(6) The respondents have filed their return in this case. While denying the contentions raised by the petitioners on merits, the respondents have also taken an objection regarding maintainability of this writ petition. It has been contended that the writ petition against the order referred to above, is not maintainable before this Court. On merits, the submissions are that in fact, the civil courts are having no jurisdiction to entertain such a dispute raised between the employer and employee and the dispute being covered within the definition of industrial dispute must go before the appropriate forum and the civil suit was not maintainable. The Miscellaneous Appellate Court has rightly held that since the civil suit was not maintainable, therefore, there was no prima facie case in favour of the petitioners and the injunction application has rightly been dismissed by it.

(7) I have heard learned counsel at length and have also perused the records filed along-with the writ petition.

(8) First of all, the question of maintainability of the petition is being considered. Learned counsel for the respondents submits that the petitioner without exhausting the forum available under the law for challenging the order of Additional District Judge, has directly approached this Court and a writ petition of such a nature is not maintainable. He referred to

the provision under section 115 of the Code of Civil Procedure and also placed reliance on the preliminary objection taken in para-1 of the return. On the said point in issue, learned counsel for the petitioner submits that as an effect of coming into operation of the amended provisions of Section 115 of C.P.C., now the parties are left with no other remedy except to file a writ petition before the High Court under Article 227 of the Constitution of India. He submits that since a revision under section 115 of the C.P.C. is barred, the petitioner was having no remedy except to file this writ petition and this writ petition would be maintainable in view of the above amended provisions of law.

(9) The law on the point is well settled. Hon'ble the Apex Court has held in the matter of ***Shiv Shakti Coop. Housing Society, Nagpur -Vs- Swaraj Developers and others***, reported in ***(2003) 6 SCC Pg.659*** that a plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is "yes" then the revision is maintainable. But on the contrary, if the answer is "no" then the revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the lis, the revision will not be maintainable. (Please see para 32 of the judgment).

The apex Court further held in the matter of ***Surya Dev Rai -Vs- Ram Chander Rai and others*** reported in ***(2003) 6***

SCC 675 that section 115 of C.P.C., as amended by the Act 46 of 1999, does not now permit a revision petition being filed against an order disposing of an appeal against the order of the trial Court whether confirming, reversing or modifying the order of injunction granted by the trial Court. The reason is that the order of the High Court passed either way would not have the effect of finally disposing of the suit or other proceedings. The exercise of revisional jurisdiction in such a case is taken away by the substitution of the proviso to section 115(1) CPC by the said Amendment Act 46 of 1999. In the said situation, it has been further held by the Apex Court that the power of the High Court under Articles 226 and 227 of the Constitution of India is always in addition to revisional jurisdiction conferred on it. The curtailment of revisional jurisdiction of the High Court u/s 115 of CPC by amendment Act 46 of 1999 does not take away and could not have taken away the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. The power exists, untrammelled by the amendment in Section 115 CPC, and is available to be exercised subject to rules of self-discipline and practice which are well settled.

(10) In the light of the above discussions and also in the light of the facts and circumstances of the case and the law laid down by the apex Court in the aforesaid two decisions, it is

apparent that after coming into force of the new amendment in the Code of Civil Procedure, an order passed in Misc. Appeal by the appellate Court against an order of grant or refusal of the injunction by the trial Court will not be revisable, therefore, the aggrieved party will have no remedy except to file a writ petition under the superintending jurisdiction of the High Court under Article 227 of the Constitution of India. In this view of the matter I am of the opinion that the preliminary objection taken by the respondents regarding maintainability of the writ petition has to be overruled and the same is overruled. The petition is held to be maintainable.

(11) Now on merits, learned counsel for the petitioner argues that for the reliefs of the correction of date of birth, the civil jurisdiction will not be barred. He refers to a decision of the Apex Court reported in ***AIR 1991 S.C. Page 1546 (Ishar Singh, Appellant -Vs- National Fertilizers and another, Respondents)*** and argues that the maintainability of the suit has to be decided with reference to the date of institution of the proceedings and since on the date of institution of the suit, petitioner was not retired the suit would not have been held to be barred.

(12) First of all, in the opinion of this Court the lower appellate Court has not decided the point of jurisdiction on merits. In fact, dealing with the matter while examining prima facie case in favour of the petitioner, the appellate Court has incidentally said that since the civil suit is barred before a civil

court, therefore, a prima facie case is not made out in favour of the petitioner and the trial Court erred in law in granting injunction in his favour. A mere reference to the above effect on the question of maintainability of the suit cannot be said to be a decision on the point. In fact, it is an incidental observation of the appellate court and the same is made for the purposes of determining a prima facie case existing or not, in favour of the petitioner.

(13) In Ishar Singh's case, referred to above, the apex Court has held that the law is well settled that the matter which comes within the purview of section 9 of C.P.C. are maintainable in civil court. The apex Court has said that a suit for correcting the date of birth in the record would be maintainable. In fact, asking for correction of that type may be for various purposes and need not necessarily be confined to the question of claiming the relief available under the Industrial Disputes Act. The maintainability of the suit has to be decided with reference to the date of institution of the proceedings and since on the date when the suit was filed, none of the eventualities covered by section 2-A of the I.D. Act happened, the petitioner could not have approached the forum under the I.D. Act for relief and in the said situation the civil suit would not be barred by section 2-A of the I.D. Act. It has also been held by the apex Court that if for part of the reliefs of the suit is maintainable in the forum where it has been laid, it is not open to the forum to shut out its doors to the suitor. In

that view of the matter, so far as the relief of rectification of the records relating to date of birth is concerned, the civil court has jurisdiction to grant that relief. The Apex Court has also said that where the employee stood superannuated even on the basis of corrected date of birth by the time, the civil suit came to be decided in his favour, the consequential reliefs could not be granted by the civil courts.

(14) The apex court in the matter of ***The Premier Automobiles Ltd., Appellants –Vs- Kamlakar Shantaram Wadke and others, Respondents reported in AIR 1975 SC 2238*** also laid down the principles applicable to the jurisdiction of the Civil Court in relation to an Industrial Dispute in the following manner :

> *"(1) If the dispute is not an industrial dispute, nor does it relate to the enforcement of any other right under the Act the remedy lies only in the civil Court.*
>
> *(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.*
>
> *(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get adjudication under the Act.*
>
> *(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either section 33C or the raising of an industrial dispute, as the case may be."*

In point no.1, it has been held that if the dispute is not an industrial dispute nor does it relate to enforcement of any

other right under the Act, the remedy lies only in the civil Court. In fact, these are the guidelines of the Apex Court on the basis of which, the civil court is to determine as to whether a dispute is covered under the definition of an industrial dispute and the suit would be barred under the provisions of section 2-A or 2(k) of the I.D. Act or not. A consideration is also to be given to the date of filing of the suit and the position of employee on the said date. After going through the records, I am of the opinion that the decision on the point should have come after giving due opportunity of hearing to all the parties concerned. Merely saying incidentally while dealing with the matter to determine a prima facie case, the appellate court cannot say in the above manner that it has no jurisdiction to entertain the suit. This order is a superficial order passed in one line without assigning any reasons for the same and the same cannot be upheld.

(15) It is a settled law that the reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. (Please see ***Alexander Machinery Dudley Ltd. -Vs- Crabtree (1974 LCR 120*** *which has been referred in case of* ***Regional Manager,UPSRTC, ETAWAH and others -Vs- Hoti Lal reported in AIR 2003 S.C. Pg.1462 vide para 10).***

(16) The lower appellate Court has quoted the decision of the apex Court reported in ***2002 Part-1 CGLJ 248 (Chandrakant***

Tukaram Nikam & others –Vs- Municipal Corporation of Ahmedabad & another) which is not applicable in the present case. The very first para of the said decision shows that the matter was in relation to the Workmen of Ahmedabad Municipal Corporation who had challenged the orders of dismissal/removal from service by filing a civil suit. Admittedly, the suit in this case was filed after the dismissal/removal orders were passed and the judgment was distinguishable on this point.

(17) During the course of arguments, learned counsel for the petitioner submits that the petitioner has already been retired on 31.3.2004. It is very fairly stated that the order of temporary injunction and also relief of permanent injunction have become infructuous. He also made a submission that the written statement in the matter has already been filed by the respondents/defendants and the matter is pending before the trial Court. He further submits that the petitioner is a retired person and his case should be directed to be decided in accordance with law.

(18) In light of the aforesaid discussions and also in light of the submissions made at Bar, in the opinion of this Court the orders passed by the Courts below - trial court as well as the appellate Court, are required to be set aside. Accordingly, they are set aside. The trial Court is directed to frame an issue on

the question of maintainability of the suit and thereafter decide the same in accordance with law after giving due opportunity of hearing to both the parties. The petition is allowed. Looking to the facts and circumstances of the case, there shall be no order as to the costs.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/